

[GARTNER COMES UNDER FIRE AT SOUTH AFRICAN TAX AGENCY PROBE](#)[GERMANY MAY MAKE 'POLITICAL MESSAGE' WITH DIGITAL TAX SUPPORT](#)

View from above of the town of Chinchon with the Plaza Mayor in the center, Madrid, Spain.

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## News

# Spain Court's 'Unusual Action' Brings Mortgage Tax Uncertainty

Posted Oct. 23, 2018, 3:44 PM



- *Spanish Supreme Court says banks to pay mortgage-documentation tax*
- *Clearer guidance expected Nov. 5*

Spain's Supreme Court confirmed a controversial ruling that banks—and not homebuyers—pay a tax linked to mortgage loans.

The court confirmed its stance on Oct. 22. It had [ruled](#) Oct. 16 that banks must pay the mortgage documentation tax. It then issued an uncommon [retraction](#) Oct. 19, stating that it would decide whether or not to confirm the “radical” shift in jurisprudence.

Though the ruling is firm, the court said it would establish more clear doctrine on the matter after a Nov. 5 plenary meeting to discuss all pending appeals regarding the tax. That waiting period adds uncertainty to the situation, practitioners said. The court's move puts in question billions of euros in back taxes and accrued interest.

“Such a drastic and unconventional reversal like this isn't normal,” Rubén Cueto Vallverdú, directing partner at Vallverdú Abogados in Gijón told Bloomberg Tax Oct. 22.

“The sentence is firm and they can't go backward, but they have to decide what doctrine they are going to use” going forward, Cueto said.

Spain's largest banks that could be affected include Banco Santander S.A., Banco Bilbao Vizcaya Argentaria S.A., CaixaBank S.A., Banco de Sabadell S.A., and Bankia S.A.

CaixaBank and BBVA declined to comment. The other banks didn't immediately respond to Bloomberg Tax's request for comment.

### Clarity Needed

Cueto said the uncertainty could mean that some banks freeze the granting of loans until the doctrine is clear. At the same time, he said he is telling clients, that are affected mortgage holders, not to jump the gun and to be cautious until after Nov. 5.

“It is important that the Supreme Court clear up as quickly as possible how mortgages are to be formalized with regard to the tax,” José Luis Martínez, spokesman for the Spanish Banking Association, told Bloomberg Tax in an Oct. 22 email.

Nonetheless, Martínez said the Oct. 16 ruling “is of a fiscal nature and affects the relationship between the taxpayer and the treasury, with banks having no part.” The association said banks have received no money from clients for the tax.

### 'Radical Shift'

In its response to an appeal regarding the mortgage documentation tax, the Oct. 16 ruling annulled an article of the existing law which designated the borrower as the affected tax subject, and determined that the lender should instead shoulder the tax.

Then on Oct. 19, the president of the court's Third Chamber, Luis María Díez-Picazo Giménez, issued a brief note calling the ruling a “radical shift in judicial criterium” with “enormous economic and social repercussions” requiring further debate.

This overruled any and all opinions regarding pending appeals on this matter and called on the chamber's plenary to debate and decide whether or not to confirm the judicial about-face.

The president's actions triggered criticism from some judges, who called for his resignation.

“There are no precedents for this unusual action by Mr. Díez -Picaza Giménez,” and he should have opened the debate before the ruling was issued, said the progressive group Judges for Democracy in an Oct. 22 statement.

### Uncertainty Over Back Taxes

Final confirmation that lenders are responsible for taxes could mean some 1.5 million taxpayers who signed mortgage agreements in the last four years could demand about 3.6 billion euros (\$4.1 billion) in back taxes and accrued interest, the union of treasury ministry technicians (Gestha) said in a statement Oct. 22.

Gestha said homeowners would have to reclaim the last four years in taxes through their regional tax authorities, rather than through banks. At the same time, the union said an additional 13.4 million homeowners with mortgages from before September 2014 “would have to sue their banking entities to receive 25.6 billion euros, plus interest.”

“In any case, Gestha considers that banking entities will have sufficient muscle to comply with the ruling and return mortgage tax payments, which for the past four years mean only 9.7 percent of banking sector profits over the same period,” the statement said.

Final confirmation of the Oct. 16 ruling won't have a retroactive effect on the banking sector, given that “firm rulings that annual a general rule are effective starting the day of their publication,” Martínez said.

The Spanish Association of Tax Advisers said in an email that the court's original ruling created legal insecurity and “opens up the possibility” of mortgage debtor challenges to taxes paid over the past four years.

The association called on regulators to revise the original 1993 law and “adapt it to the current financial context” with a legal framework guaranteeing legal security.

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